

APPEAL NO. 040188
FILED MARCH 15, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 10, 2003. The hearing officer determined that appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 12th quarter. Claimant appealed the determinations regarding good faith and SIBs entitlement on sufficiency grounds. Respondent (carrier) responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

The hearing officer could find from the evidence that claimant did not satisfactorily participate in a Texas Rehabilitation Commission (TRC) program in this case. There was no evidence from the TRC regarding satisfactory participation during the qualifying period, which ran from April 2 to July 1, 2003. The evidence from the TRC covered a period of time before the qualifying period. Additionally, the hearing officer could find that claimant was not complying with the terms of the Individualized Plan for Employment, and thus was not "satisfactorily participating" during the qualifying period. The evidence supports a determination that claimant had not enrolled in, and satisfactorily participated in, a full-time vocational rehabilitation program sponsored by the TRC during the qualifying period.

The hearing officer could also determine from the evidence that, during the qualifying period, claimant had not returned to work in a position that was relatively equal to the injured employee's ability to work. Even though claimant technically was employed, he had not earned any income and the hearing officer could find that any reasonable training period, during which he might be expected not to earn any commission income, had passed.

We have reviewed the complained-of determinations regarding good faith and SIBs entitlement and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determinations are supported by the record and are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Even though we are affirming, we would note that it would be advisable for hearing officers to track the language of the rules in making determinations regarding the sub-issues covered in the SIBs rules. This avoids any question that the wrong standard has been applied by the hearing officer. We affirm the hearing officer's decision and order.

According to information provided by carrier, the true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**LEO F. MALO
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Edward Vilano
Appeals Judge